Supreme Court, U.S.
FILED

No. (1) 041163 JAN 4 - 2005

OFFICE OF THE CLERK

IN THE SUPREME COURT OF THE UNITED STATES

DECEMBER TERM, 2004

RANDALL G. STEPHENS

Petitioner,

v.

UNION CARBIDE CORPORATION ET. AL., DR. WILLIAM H. JOYCE AND JUDGE JANET R. BURNSIDE,

Respondents.

ON PETITION FOR A EXTRAORDINARY WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A EXTRAORDINARY WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

As a direct result of the error in the proceedings of District Court vital medical treatment and compensation benefits has been denied to the Petitioner causing him to endure delayed medical treatment and compensation benefits, further aggravated severe excruciating pain and suffering with gross physical deterioration of his lower extremity, severe stress and mental anguish. Respondent Judge Janet R. Burnside presided over the matter of Randall G. Stephens (the Plaintiff below) vs. Dr. William H. Joyce and the Union Carbide Corporation et. al., (the Defendants below) and has obtained a consent decree enjoining one Randall G. Stephens from his day in court before a jury to present the original record of proceedings of his successfully workers compensation claim into the Court of Common Pleas Cuyahoga County, Ohio.

In the federal court suit brought by Petitioner against

Respondents Judge Janet R. Burnside, Dr. William H. Joyce and the Union Carbide Corporation et. al., the court below held that the Full Faith and Credit obligation precluded Petitioner from submitting the Court of Common Pleas Cuyahoga County, Ohio Docket Sheet and journal entry of Respondent Judge Janet R. Burnside.

The question presented is whether the court below erred in holding that Petitioner, whom is a party to the state proceeding and having a successive and mutual interest in the same property with the Respondents Judge Janet R. Burnside, Dr. William H. Joyce and the Union Carbide Corporation et. al., could be precluded from submitting the original record proceedings the Court of Common Pleas Cuyahoga County, Ohio Docket Sheet and journal entry of Respondent Judge Janet R. Burnside the basis of an obligation to give Full Faith and Credit to the state court judgment.

PARTIES TO LITGATION

The Petitioner Randall G. Stephens, is a Black male of African ancestry, born August 7, 1951 at 10:15 A. M., in the United States of America, State of Ohio County of Cuyahoga and City of Cleveland. A registered voter, meeting all qualification as being a bona fide citizen of this country.

The Respondent Union Carbide Corporation et. al., is a corporation duly organized and existing according to law and engaged in business in the State of Ohio, Corporate Offices are located at 39 Ridgebury Road Danbury, Connecticut 06817-0001 U.S.A., presently a subsidiary of Dow Chemical Company.

The Respondent Dr. William H. Joyce, is the present President of the Union Carbide Corporation and has the responsibility of making all corporate decisions.

The Respondent Judge Janet R. Burnside, is a elected

public official sworn under oath of the United States Constitution and the Ohio Constitution to execute and discharge all and singular, her duties in a fair and impartial manner based on the findings of fact and conclusions of law.

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PETITION FOR EXTRAORDINARY WRIT OF CERTIORARI

Randall G. Stephens Petitioner Pro se, respectfully petition for a extraordinary writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The decision of the Court of Appeals Affirming Petitioner's Petition for Extraordinary Writ of Certiorari ruling that the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument. The decision of the District Court addressing the Full Faith and Credit issue was filed September 4, 2003, based on an incorrect assumption that the state agencies had reversed Petitioner's workers compensation claim for prompt and proper medical treatments and compensation benefits.

JURISDICTION

On February 5, 2004 the Court of Appeals' ruled the motion for reconsideration was denied by order entered October 2, 2003. The notice of appeal filed on October 9, 2003 was late as it may apply to the September 4, 2003 judgment. Because the motion for reconsideration may be treated as a Fed. R. Civ. P. 60(b) motion for relief, the notice of appeal was timely filed from the denial of that motion. The jurisdiction of this Court is invoked under Title 28 United States Code Section 1251(b)(2), provides all Controversies between the United States and a State.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Title 28 United States Code Section 1738 provides the records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States

and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists.

United States Constitution Article IV Section 1. The Full Faith and Credit statute provides in relevant part that:

"Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken."

STATEMENT OF THE CASE

This Full Faith and Credit case began as a intentional tort action by Respondents William H. Joyce President of the Union Carbide Corporation et. al., a self insured employer whom refuses to comply with the Ohio Revised Code Section 4123.35(B) and the Bureau of Workers Compensation

and Industrial Commission of Ohio's orders to the employer, to provide medical treatment and compensation benefits for his injuries. Petitioner having successfully completed his workers compensation claim filed an action in the Court of Common Pleas Cuyahoga County, Ohio October 29, 1998. January 7, 1999 Respondents Dr. William H. Joyce and the Union Carbide Corporation et. al., filed their motion requesting that Petitioner's complaint be dismissed based on Ohio Rule of Civil Procedure 12(B)(1) lack of jurisdiction over the subject matter. February 4, 1999 presiding Judge Janet R. Burnside's journal entry reads as follows:

"Plaintiff's motion for leave to file motion for summary judgment is denied; Plaintiff's motion for summary judgment filed 01/28/99 is hereby stricken from the docket as it was filed without leave."

February 11, 1999 presiding Judge Janet R. Burnside's

journal entry reads as follows:

"2/10/99; Pretrial had; Plaintiff elects to stand on previously filed response to Defendant's motion to dismiss instead of amending complaint. Court to Rule.

February 12, 1999 presiding Judge Janet R. Burnside entered her journal entry dismissing Petitioner's complaint without prejudice. May 13, 1999 Petitioner filed his second complaint in the Court of Common Pleas Cuyahoga County, Ohio and Respondents Dr. William H. Joyce and the Union Carbide Corporation et. al., filed their motion to dismiss Petitioner's complaint pursuant to Ohio Rule of Civil Procedure 12(B)(1). July 23, 1999 presiding Judge Janet R. Burnside dismissed Petitioner's complaint pursuant to Ohio Rule of Civil Procedure 12(B)(1), granting Respondents Dr. William H. Joyce and the Union Carbide Corporation et. al., motion.

Petitioner filed the instant action in the United States

District Court pursuant to 42 United States Code Sections 1981, 1983 and 1985, alleging his civil rights were violated when the Respondents conspired to deny the payment of his workers' compensation and medical treatment. District Court ordered Petitioner to amend his complaint and set forth a recognizable federal claim. Petitioner re-filed the complaint and District Court determined that Petitioner's amended complaint did not contain "allegations reasonably suggesting Petitioner might have a valid federal claim" and dismissed the complaint. Petitioner filed a motion for reconsideration. The District Court denied Petitioner's motion therefore Petitioner filed a notice of appeal from the judgment.

However, the Court of Appeals for the Sixth Circuit ordered that the motion for reconsideration may be treated as a Fed. R. Civ. P. 60(b) motion for relief, the notice of appeal was timely filed from the denial of that motion. The decision rest on an erroneous view of the Federal Full Faith

and Credit Statute, Title 28 United States Code Section 1738, conflicts with the decisions of this Court and other Courts, and raises an important question of law warranting this Court's plenary review.

1. Background. Petitioner an Ohio resident sustained a left knee injury during the course of his employment with Respondents Dr. William H. Joyce and the Union Carbide Corporation et. al., on October 14, 1969. Petitioner filed a complaint into the Court of Common Pleas Cuyahoga County, Ohio, which was assigned to Judge Janet R. Burnside whom altered the Court's Docket Sheet to avoid her duty in making a judgment in favor of Petitioner, and further conspired with the Respondents Dr. William H. Joyce and the Union Carbide Corporation et. al., to dismiss Petitioner's complaint without prejudice. Petitioner filed his second complaint into the Court of Common Pleas Cuyahoga County, Ohio, which was transferred to the docket of Judge Janet R. Burnside, whom again conspired

with the Respondents Dr. William H. Joyce and the Union Carbide Corporation et. al., to dismiss Petitioner's complaint with prejudice barring Petitioner from submitting his action into State Court preventing him from his day in Court.

2. Initial Proceedings in the District Court. Petitioner filed this action into the District Court alleging that the Respondents Dr. William H. Joyce and the Union Carbide Corporation et. al., and Judge Janet R. Burnside, engaged in the act of committing an aggravated felony of the first degree by complicity and conspiracy. District Court ordered that Petitioner amend his complaint setting forth a valid claim. Petitioner amended his complaint by setting forth specific findings of fact of the Original Record of Proceedings held in the State of Ohio in this matter which was dismissed and Petitioner filed his motion for reconsideration, which was denied. District Court has jurisdiction under Title 28 United States Code Section 1343

third and fourth paragraph. Petitioner then filed a timely appeal from such motion into the Court of Appeals for the Sixth Circuit.

3. The Court of Appeals' Decision. February 5, 2004 the Court of Appeals for the Sixth Circuit ordered that Petitioner's motion for reconsideration will be treated as a motion for relief Federal Rule of Civil Procedure 60(b)(6), which was timely filed given the Court of Appeals Jurisdiction.

June 11, 2004 the Court of Appeals for the Sixth Circuit ordered that the appeal be expedited on submission on briefs to a three-Judge hearing panel.

November 4, 2004 the Court of Appeals for the Sixth Circuit ordered pursuant to Rule 34(j)(2)(C), provides as follows the facts an d legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.

November 26, 2004 the Court of Appeals for the Sixth Circuit Mandate pursuant to the court's disposition that was filed 11/4/04 the mandate for this case hereby issues today which reads as follows:

Northern District of Ohio at Cleveland 801 W. Superior Avenue Suite 100 Carl B. Stokes U. S. Courthouse Cleveland, Ohio 44113-1830. Re: 03-4418 Stephens vs. Union Carbide Corp. District Court No. 03-01483. Enclosed is a copy of the mandate filed in this case. The certified record was never sent to this Court on appeal. cc: Honorable Ann Aldrich

REASONS FOR GRANTING THE WRIT

The Sixth Circuit Court has held that the Full Faith and Credit obligation does not precludes petitioner from submitting a certified copy of the Docket Sheet of the Court of Common Pleas Cuyahoga County, Ohio journal entries of Judge Janet R. Burnside into a federal court of Ohio. This decision, which is flatly consistent with both basic principles

of due process and Title 28 United States Code Section 1738. It is also flatly consistent with numerous decisions in the Courts of Appeals and the state courts.

If permitted to stand, the Sixth Circuit's ruling would provide wrongdoers with a blueprint for purchasing the silence of potentially vital "Pattern of Corrupt Activity by Complicity and Conspiracy" in violation of the ancient maxim that the public has a right to every man's evidence. The Court of Appeals' decision instructs wrongdoers that they need only enter into consent decrees with potential violations in which those whom participation promise, in exchange for money supplied in accompanying settlement agreements, never to appear in court. Contrary to the District Court's reasoning, such an assault upon the integrity of the judicial system finds support in the Full Faith and Credit principle.

1. The District Court's decision fundamentally misinterprets the Full Faith and Credit obligation of a federal

court under Title 28 United States Code Section 1738. As this Court has explained, the statute "directs all courts to treat a state court judgment with the same respect that it would receive in the courts of the rendering state."

In the case of Matsushita Electric Industrial Co., LTD., et. al., v. Epstein et. al., 516 U. S. 367 (1996) Certiorari to the United States Court of Appeals for the Ninth Circuit in this case the Ninth Circuit found that the Delaware judgment was not a bar to further prosecution of the federal action under the Full Faith and Credit Act, Title 28 United States Code Section 1738, and fashioned a test limiting the preclusive force of a state-court settlement judgment to those claims that could "have been extinguished by the issue preclusive effect of an adjudication of the state claim."

At page 395 it states as follows every State's law on the preclusiveness of judgments is pervasively affected by the supreme law of the land. To be valid in the rendition forum,

and entitled to recognition nationally, a state court's judgment must measure up to the requirements of the Fourteenth Amendment's Due Process Clause. Therefore this case was reversed, and remanded for proceedings consistent with this opinion by Thomas, J., in which Rehnquist, C. J. and O'Connor, Scalia, Kennedy, Souter, and Breyer, j. j., concurred.

When faced with a state-court judgment relating to an exclusively federal claim, a federal court must first look to the law of the rendering State to ascertain the effect of the judgment. If state law indicates that the particular claim or issue would be barred from litigation in a court of that State, then the federal court must next decide whether, "as an exception to section 1738," it "should refuse to give preclusive effect to [the] state court judgment."

In the case of Magnolia Petroleum Co. v. Hunt 320 U. S. 430 (1943) Certiorari to the Court of Appeals for the First

Circuit of Louisiana, to review the affirmance of a judgment for the plaintiff in a suit by an employee against an employer to recover compensation for an injury received in the course of the employment. The highest court of the State refused writ of certiorari and review, at page 437 it reads as follows:

"We held that the state of the employer and employee is free to apply its own compensation law to the injury of the employee. And for like reasons we held also that the state of the place of injury is free to apply its own law to the exclusion of the law of the state of the employer and employee." At page 446 it further stated "and we cannot say that a workmen's compensation award for injury stands on any different footing. In fact held that it did not and we see no reason to depart from its ruling. Case reversed.

In this instant case before this Court Petitioner residing in the State of Ohio and contracted with the Respondents Dr. William H. Joyce and the Union Carbide Corporation et. al.,

for employment in the State of Ohio sustained a left knee injury during the course of his employment which occurred in the State of Ohio.

When first looking at the State of Ohio's preclusion law in determining the preclusive effects of the State Court's judgment, in the case of Marrese v. American Academy of Orthopaedic Surgeons, 470 U. S. 373, 380 (1985) Certiorari to the United States Court of Appeals for the Seventh Circuit Illinois, at page 381 it provides the analytical framework for deciding whether the judgment precludes the exclusively federal action. The Court's analysis finding that state law would in fact bar relitigation of the discrimination issue decided in the earlier state proceedings. That finding implied that the plaintiff could not relitigate the same issue in federal court unless some exception to Section 1738 applied.

In this present case before this Court Petitioner's

successful workman's compensation claim shows without shadow of doubt by law Petitioner is entitle to medical treatment and compensation benefits which District Court's decision is depriving Petitioner of and further does not measure up to the requirements of the Fourteenth Amendment Due Process Clause nor Title 28 United States Code Section 1738.

First the Docket Sheets of the Court of Common Pleas Cuyahoga County, Ohio reveals that Petitioner's workers compensation claim was appealed from the State Agencies into the Court of Common Pleas Cuyahoga County, Ohio and the Court denied the appeal due to the fact that Petitioner had successfully won his workers compensation claim for medical treatment and compensation benefits.

Petitioner filed his first complaint into the Court of Common Pleas Cuyahoga County, Ohio and Respondent Judge Janet R. Burnside altered the Docket Sheet to prevent from doing her duty by ruling in the favor of the Petitioner

for Summary Judgment. This act shows actual malice which is a prerequisite to recovery of punitive damages. As stated in the case of New York Times Co. v. Sullivan 376 U. S. 254 (1964). This complaint was dismissed by Judge Janet R. Burnside by granting the Respondents Dr. William H. Joyce and the Union Carbide Corporation et. al., motion 12(B)(1), stating that the Court lack jurisdiction over the subject matter.

Petitioner filed his second complaint into the Court of Common Pleas Cuyahoga County, Ohio this complaint was dismissed by Respondent Judge Janet R. Burnside again granted the Respondents Dr. William H. Joyce and the Union Carbide Corporation et. al., motion 12(B)(1), stating that the Court lack jurisdiction over the subject matter. These two dismissals in fact are consent decrees with Respondents Dr. William H. Joyce and the Union Carbide Corporation et. al., in exchange for money supplied in accompanying settlement agreements never to appear in

Court.

Secondly every State's law on the preclusiveness of Judgment is pervasively affected by the supreme law of the land. To be valid in the rendition forum, and entitled to recognition nationally, a state court's judgment must measure up to the requirements of the Fourteenth Amendment's Due Process Clause. In the case of Allen et. al., v. McCurry 449 U. S. 90 (1980) Certiorari to the United States Court of Appeals for the Eighth Circuit at page 100 at states as follows:

"The 42nd. Congress was acting in a way thoroughly consistent with the doctrines of preclusion. In reviewing the legislative history of Section 1983 United States Code Title 42 the Court inferred that Congress had intended a federal remedy in three circumstances; where state substantive law was facially unconstitutional, where state procedural law was inadequate to allow full litigation of a constitutional

claim, and where state procedural law, though adequate in theory, was inadequate in practice, In short, the federal courts could step in where the state courts were unable or unwilling to protect federal rights. This understanding of Section 1983 United States Code Title 42 might well support an exception to res judicata and collateral estoppel where state law did not provide fair procedure for the litigation of constitutional claims, or where a state court failed to even acknowledge the existence of the constitutional principle on which a litigant based his claim. Such an exception, however, would be essentially the same as the important general limit on rules of preclusion that already exists."

Title 42 United States Code Section 1983 provides every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights,

privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in action at law, suit in equity or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken is such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

Because Congress must "clearly manifest" its intent to depart from Section 1738, in situations where Section 1738 is inapplicable are not dispositive. They establish only that initial resort to state administrative remedies does not deprive an individual of a right to a federal trial.

In this present case before this Court it is evident that the above state judgment meets the federal remedy in all three circumstances:

1. When Petitioner asserted his workers compensation

claim into the state court to enforce a state law and the state court has no jurisdiction over the state law then the law of the state is facially unconstitutional.

2. When Petitioner's workers compensation claim was appealed into the state court all issues had been settled causing any further state procedure law inadequate to allow full litigation of a constitutional claim.

3. When Petitioner applied the Ohio Rules of Civil Procedure to the Rules Governing the Courts of Ohio to enforce the Ohio Revised Code though adequate in theory, was inadequate in practice.

In this instant case Petitioner has not had a fair hearing due to the state administrative proceedings and court judgments is preventing and depriving Petitioner of a fair hearing within the state courts and the dismissal of the District Court case is preventing Petitioner of his civil rights under the federal constitution.

This establishes only that initial resort to state administrative remedies does not deprive an individual of a right to a federal trial. In the case of Klapprott v. United States 355 U. S. 601 (1949) Certiorari to the United States Court of Appeals for the Third Circuit at page 615 first paragraph reads as follows:

"Petitioner is entitled to a fair trial. He has not had it. The government makes no claim that he has. Fair hearings are in accord with elemental concepts of justice, and the language of the "other reason" clause of 60(B)(6) is broad enough to authorize the Court to set aside the default judgment and grant petitioner a fair hearing."

Under Federal Rule of Civil Procedure 60(B)(6) provides on motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reason any "other reason" justifying relief from the operation of the

judgment.

The "other reason" then, must include unusual and extreme situations where principles of equity mandate relief. Parties seeking relief under Rule 60(b)(6), however, must file their motion within a "reasonable" time, which ordinarily depends on the facts of a given case including the length and circumstances of the delay, the prejudice to the opposing party by reason of the delay, and the circumstances compelling equitable relief.

In this present case before the Court when correctly applying Federal Rule Civil Procedure 60(b)(6), the unusual and extreme situations is that Respondent Judge Janet R. Burnside with intent and prior calculation and design altered the Court's Docket Sheet to avoid her duty under Ohio Rule of Civil Procedure 56, which by law Petitioner is entitled to a judgment in his favor. Then for Respondent Judge Janet R. Burnside on two occasions conspired with the Respondents Dr. William H. Joyce and the Union Carbide

Corporation et. al., by granting their motion to dismiss Petitioner's complaint on the grounds that the Court lack jurisdiction over the subject matter, just to prevent Petitioner from his civil and legal right to his day in court, takes these acts by Respondent Judge Janet R. Burnside and Dr. William H. Joyce and the Union Carbide Corporation et. al., to a extreme situation.

To compound the Honorable Judge Ann Aldrich's error and dismiss Petitioner's complaint without having all the true and complete facts before the Court, which decision also prevents Petitioner from the vital medical treatment and compensation benefits needed, which by law is contrary to Ohio Revised Code Section 4123.35(B), the Fourteenth Amendment of the United States Constitution, due to the fact that he is entitled to by law.

Parties seeking relief under Rule 60(b)(6), however, must file their motion within a "reasonable" time, which

ordinarily depends on the facts of a given case including the length and circumstances of the delay, the prejudice to the party by reason of the delay, and the circumstances compelling equitable relief.

Given the true facts of this case before the Court is that this began as a workers compensation claim against a "self insured employer" on October 14, 1969, the critical circumstances of this case is that the Petitioner has been from the beginning and is at this present time in need of vital medical treatment and at each dismissal of each complaint has been denied and delayed Petitioner of such vital medical treatment. Petitioner filed a motion for leave to file summary judgment and summary judgment into the Court of Common Pleas Cuyahoga County, Ohio and for the Respondent Judge Janet R. Burnside to prior calculate by design and intentionally alter the Court's Docket Sheet then to conspire with the Respondents Dr. William H. Joyce and the Union Carbide Corporation et. al. to prevent Petitioner

from his day in Court. When having knowledge that it was a successfully worker's compensation claim, due to the fact that the claim had been dismissed with prejudice against the Respondents when appealed from the State Agencies into the Court of Common Pleas Cuyahoga County, Ohio prior.

The Court of Appeals for the Sixth Circuit treated Petitioner motion for reconsideration as a Federal Rule of Civil Procedure 60(b) motion for relief, causing the notice of appeal timely granting jurisdiction under the ten (10) day statue.

As a direct result of the above acts of the Respondents Judge Janet R. Burnside, Dr. William H. Joyce and the Union Carbide Corporation et. al., Petitioner has been denied and delayed vital medical treatment as well as compensation benefits which under the Ohio Revised Code Section 4123.35(B) and the Fourteenth Amendment of the United States Constitution Petitioner is entitled.

Ohio Revised Code Section 4123.35(B) reads in pertinent part and provides as follows:

"That such employers and publicly owned utilities who will abide by the rules of the Administrator and who may be of sufficient financial ability to render certain the payment of compensation to injured employees or the dependents of killed employees, and the furnishing of medical, surgical, nursing, and hospital attention and services and medicines, and funeral expenses, and compensation benefits equal to or greater than as provided. All employers granted the privilege to pay compensation directly shall demonstrate sufficient financial and administrative ability to assure that all the obligations under this section are promptly met.

For this reasoning Petitioner should be granted the greater amount of this claim, due to the length and unusual and extreme situations which require these circumstances compelling equitable relief in full.

Federal Rule of Civil Procedure 52(a) provides, in all, actions tried upon facts without a jury or with an advisory jury, the court shall find the facts specially and state separately it conclusions of law thereon, and judgment shall be entered pursuant to rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court.

CONCLUSION

In the case of Thomas v. Washington Gas Light Co. 448 U. S. 261 (1980) Certiorari to the United States Court of Appeals for the Fourth Circuit at page 272 last paragraph reads as follows:

"The doctrine of stare decisis imposes a severe burden on

the litigant who asks us to disavow one of our precedents. For that doctrine not only plays an important role in orderly adjudication; it also serves the broader societal interests in evenhanded, consistent, and predictable application of legal rules. When rights have been created or modified in reliance on established rules of law, the arguments against their change have special force.

It is therefore appropriate to begin the inquiry by considering whether a rule that permits, or a rule that forecloses, successive workmen's compensation awards is more consistent with settled practice. The answer to this question is pellucidly clear."

Finally, in the case of Thomas v. Washington Gas Light Co. 448 U. S. 261 (1980) at page 288 second paragraph it further reads as follows:

"One purpose of the Full Faith and Credit Clause is to bring an end to litigation. As the Court noted in Riley v.

New York Trust Co., 315 U. S. 343, 348-349 (1942) Certiorari to the Supreme Court of Delaware at page 348 last paragraph reads as follows:

"This clause of the Constitution brings to our Union a useful means for ending litigation. Matters once decided between adverse parties in any state or territory are at rest.

For the foregoing reasons, the Petition for Extraordinary Writ of Certiorari should be granted and the case reversed and remanded to the United States District Court for further proceedings in compliance with Federal Rule of Civil Procedure 52(a).

December 30, 2004 A. D.

Respectfully submitted by,

Randall G. Stephens,
Petitioner Pro se
3434 East 117th. Street
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(216) 491-8566

No. 03-4418

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RANDALL G. STEPHENS,	)	FILED
	)	
Plaintiff-Appellant,	)	FEB 05 2004
	)	
v.	)	LEONARD GREEN,
	)	Clerk
UNION CARBIDE CORPORATION;	)	
JANET R. BURNSIDE;	)	
WILLIAM H. JOYCE,	)	
	)	
Defendants-Appellees.	)	

Before: BATCHELDER, GIVVONS, and COOK, Circuit Judges.

This matter is before the court upon consideration of the appellant's response to this court's order directing him to show cause why his appeal should not be dismissed for lack of jurisdiction on the basis of a late notice of appeal. The appellant responded by arguing that this court has jurisdiction because he filed a motion in the district court which tolled the appeal period as provided by Fed. R. App. P. 4(a)(4), and that he timely appealed after a decision was

made on his motion for reconsideration.

It appears from the documents before the court that the district court's memorandum opinion and separate judgment were entered September 4, 2003. An appellant can toll the appeal period by timely filing a Fed. R. Civ. P. 59(e) motion is required to be filed no later than ten days after entry of the judgment, the motion was required to be filed by September 18, 2003. See Fed. R. P. 6(a) and 59(e). The Fed. R. Civ. P. 59(e) motion filed on September 22, 2003 was late and failed to toll the appeal period. The motion for reconsideration was denied by order entered October 2, 2003. The notice of appeal filed on October 9, 2003 was late as it may apply to the September 4, 2003 judgment. See Fed. R. App. P. 4(a) and 26(a). Because the motion for reconsideration may be treated as a Fed. R. Civ. P. 60(b) motion for relief, the notice of appeal was timely filed from the denial of that motion. See Feathers v. Chevron U. S. A., Inc., 141 F. 3d 264, 268 (6th Cir. 1998).

The failure of appellant to timely file a notice of appeal deprives an appellate court of jurisdiction. Compliance with Fed. R. App. P. 4(a) is a mandatory and jurisdictional prerequisite which this court can neither waive nor extend. Baker v. Raulie, 879 F. 2d 1396, 1398 (6th Cir. 1989) (per curiam). Fed. R. App. P. 26(b) specifically provides that this court may not enlarge the time for filing a notice of appeal.

Accordingly, it is ordered that the appeal is dismissed for lack of jurisdiction as it applies to the judgment entered September 4, 2003. Only issues regarding the order denying reconsideration may be raised on appeal.

ENTERED BY ORDER OF THE COURT

_____

Clerk

No. 03-4418

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RANDALL G. STEPHENS, Plaintiff - Appellant, v. UNION CARBIDE CORP.; JANET R. BURNSIDE; WILLIAM H. JOYCE. Defendants - Appellees.	)	ORDER

The appellant, proceeding pro se, has submitted a letter with a doctor's statement which is construed as a motion to expedite this appeal for decision. Upon consideration of the motion, it is GRANTED and the appeal shall be scheduled for submission to a three-judge hearing panel for decision as expeditiously as possible.

ENTERED PURSUANT TO RULE 45(a)
RULES OF THE SIXTH CIRCUIT

Leonard Green, Clerk

No. 03-4418

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RANDALL G. STEPHENS,	)	FILED
	)	NOV 4 2004
Plaintiff-Appellant,	)	LEONARD GREEN,
	)	Clerk
v.	)	O R D E R
	)	
UNION CARBIDE CORPORATION; JANET R. BURNSIDE; WILLIAM H. JOYCE,	)	
	)	
Defendants-Appellees.	)	

Before: KEITH, CLAY, and BRIGHT,* Circuit Judges.

Randall G. Stephens, an Ohio resident proceeding pro se, appeals the denial of his motion for relief from judgment in a civil rights case. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Stephens filed the instant action against Union Carbide

Corporation (Union), his former employer; Dr. William H. Joyce (Joyce), the president of Union; and Judge Janet R. Burnside, an Ohio judge who presided over an intentional tort action filed by Stephens regarding payment of previously awarded Ohio workers' compensation benefits. Stephens alleged that pursuant to 42 United States Code Sections 1981, 1983 and 1985, his civil rights were violated when the defendants conspired to deny him payment of his workers' compensation benefits. According to Stephens, he was awarded certain workers' compensation benefits which Union has failed to pay. Consequently, Stephens filed an action in an Ohio court which was dismissed without prejudice by Judge Burnside. Stephens then filed the complaint, and Judge Burnside dismissed the complaint with prejudice. Stephens then filed the instant complaint in the district court requesting $1,600,380,985.60 in damages. The district court ordered Stephens to amend his complaint and set forth a cognizable federal claim. Stephens filed an amended complaint alleging that Union and Joyce

improperly used the workers' compensation appellate procedure and that Judge Burnside improperly used Ohio R. Civ. P. 12(B)(1) to dismiss his complaint. The district court determined that Stephens's amended complaint did not contain "allegations reasonably suggesting plaintiff might have a valid federal claim" and sua sponte dismissed the complaint. Stephens filed a motion for reconsideration stating that the district court wrongly assumed that his workers' compensation award had been reversed. The district court denied Stephens's motion. Stephens filed a notice of appeal from the judgment; however, this court issued an order allowing Stephens to appeal only the order denying reconsideration. Furthermore, because Stephens's motion for reconsideration was not timely filed in the district court, this court has determined that it will treat Stephens's motion for reconsideration as a motion for relief from judgment. See Fed. R. Civ. P. 60(b).

An order denying a motion under Rule 60(b) is examined

for an abuse of discretion on appeal. See Hood v. Hood, 59 F. 3d 40, 42 (6th Cir. 1995). Moreover, "[a] party seeking relief from judgment under Rule 60(b) must show that its case comes within the provisions of the Rule." Lewis v. Alexander, 987 F. 2d 392, 396 (6th Cir. 1993). Relief is available under 60(b) for any of six specific reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the

> judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Fed. R. Civ. P. 60(b). An appeal regarding the denial of a Rule 60(b) motion does not bring the underlying judgment up for review. See United States v. Grable, 25 F. 3d 298, 301-02 (6th Cir. 1994).

Stephens argues that he should be granted relief from judgment because the district court mistakenly based its ruling on the incorrect fact that his award of workers' compensation benefits had been reversed. While Stephens does not enumerate which subsection he relies on for relief, to the extent that he alleges a mistake under Rule 60(b)(1), the issue of whether or not Stephens's workers' compensation award had been reversed was irrelevant to the district court's determination that Stephens failed to allege a cognizable federal claim in his amended complaint.

Furthermore, to the extent that Stephens seeks relief pursuant to Rule 60(b)(6), he has not established an 'unusual and extreme situation [ ] where principles of equity mandate relief." See Olle v. Henry & Wright Corp., 910 F. 2d 357, 365 (6th Cir. 1990). Consequently, the district court did not abuse its discretion when it denied Stephens's motion for relief from judgment.

For the foregoing reasons, the district court's judgment is affirmed pursuant to Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

_____

Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, FOOM 532
POTTER STEWART U. S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Filed: November 26, 2004

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RE: 03-4418
Stephens vs. Union Carbide Corp.
District Court No. 03-01483

Enclosed is a copy of the mandate filed in this case. The certified record was never sent to this Court on appeal.

Leonard Green, Clerk

(Ms.) Valerie Fields
Deputy Clerk

cc:
Honorable Ann Aldrich
Mr. Randall G. Stephens
Mr. Jeffrey J. Wedel
Mr. Gregory T. Hoffpauir